

* **HIGH COURT OF DELHI : NEW DELHI**

CM (M) No. 1066/2010 & CM No. 14893/2010

% Judgment reserved on: 19th August, 2010
Judgment delivered on: 26th August, 2010

Smt. Kiran,
W/o Late Shri Pradeep Kumar Kaushik,
D/o Late Sh. Chander Kishore,
R/o 837, Near Sant Gyaneshwar School,
Gali No. 1, Alipur,
Delhi

....Petitioner.

Through: Mr. Ashok Sethi with Mr. Hari
Mohan, Advocates.

Versus

1. Sh. Mahinder Pal Kaushik,
S/o Sh. Nayader Singh,
R/o House No. 755/E,
Lohia Marg, Gali No. 1,
Babarpur, Shahdara,
Delhi- 110 032.

2. Sh. Jugal Kishore Sharma,
S/o Late Sh. Chander Kishore,
R/o 177, Chirag Delhi,
Delhi.
(Proforma Respondent)

....Respondents

Through: None

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

Yes

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Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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V.B.Gupta, J.

This petition under Article 227 of the Constitution of India, has been filed by the petitioner for setting aside order dated 7th July, 2010 passed by Guardianship Judge, Delhi, vide which application of petitioner under Section 151 of Code of Civil Procedure (for short as 'Code') dated 13th May, 2010, seeking permission to file certain documents was dismissed.

2. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

3. In *Waryam Singh and another vs. Amarnath and another*, AIR 1954, SC 215, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in – ‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

4. In light of principles laid down in the above decision, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

5. At the outset, it may be pointed out that on 19th August, 2010 when matter was listed for admission, it was pointed out to counsel for petitioner that copies of those documents which petitioner intended to file before the trial court have not been filed along with this petition and as such was given opportunity to file the same. However, learned counsel for petitioner contended that since reference of those documents is already there in the petition, there is no need to file the same and will argue the matter.

6. Though, it is correct that there is reference of those documents in the paper book but in the absence of copies of those documents on record, there is no option but to reject the petition outrightly. When petitioner has challenged the impugned order vide which permission was refused to file certain documents she ought to have filed copies of those documents on record for perusal of this Court. In absence of those documents no finding can be given as to whether documents sought to be filed are necessary for just decision of the case or not. Present petition is thus liable to be dismissed on this short ground alone.

7. Secondly, application seeking permission to file documents was moved under Section 151 of the Code.

8. It is well settled that as there is a specific provision in the Code [Order VIII Rule 1 (A)] for filing documents with the leave of Court,

petitioner ought to have filed application under that provision. On this count also petition is also liable to be dismissed.

9. Lastly, it is contended that strict and mechanical use of Code in the matter of evidence in appointment of guardian is legally against the beneficial objects of the Guardian and Wards Act, 1890 and grave injustice would be caused to the minor concerned.

10. In 2006, respondent no. 1 filed petition before the Court of Guardianship Judge, under Section 6 of Hindu Minority and Guardianship Act, in which petitioner filed her written statement on 24th March, 2008. Respondent closed its evidence on 13th August, 2009.

11. Application seeking permission to file additional documents was filed on 13th May, 2010, which means more than two years after petitioner filed her written statement.

12. In entire application, petitioner has not mentioned any reason as to why she did not file those documents along with written statement.

13. In *Madan Lal Vs. ShyamLal*, AIR 2002 SC 100, Supreme court has observed;

“Documents not produced at the appropriate stage shall not be received by the Court unless good cause is shown.”

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14. Trial court in this regard observed;

“The present petition was filed in the year 2005. As already mentioned above, some of the documents regarding academic performance of the child as well as school fee receipts relate to the period prior to the filing of present petition. Other documents also relate to the period ranging between 2006 to 2008 but still the applicant/respondent did not file the said documents at the earliest opportunity. Not only this, no reference has been made to either of the said documents in the written statement nor any reliance has been placed upon the said documents in the list of documents previously filed on record.

Although, it was orally submitted before the Court that previous counsel did not file the said documents at the appropriate stage, no such plea has been taken by applicant/respondent in the application under consideration. The only reason cited in the application is that the applicant/respondent had detailed discussion with her counsel number of times and it is only when the applicant brought various facts to the notice of her counsel, advise was given to search for the said documents and consequently, the applicant made search for those documents and filed the same alongwith her affidavit in evidence. This Court afraid if such pleas constitute sufficient or cogent reason for not filing the documents at the appropriate stage. This is more so when some of the documents are for the period much prior to the filing of the present petition. The provisions were inserted by legislature in Civil Procedure Code providing filing of documents by the parties alongwith their respective pleadings, had great object behind it that is to curtail the delay in trial of the

proceedings and to ensure expeditious disposal of the lis pending before the Court. In case the Court allows the party to file the documents at any stage in such a fashion as has been done in the present matter then it would send wrong message to the litigants and there would be no end to the litigation.

Now the question arises as to whether this Court should allow the applicant/respondent to file the documents in the background of the aforesaid discussion or not. The question came up for consideration before our own High Court in the matter titled as **“Asia Pacific Breweries Vs. Superior Industries”** reported in **158 (2009) DLT 670** wherein it has been held that a party cannot be allowed to keep on filing fresh material and documents with the progress of the case or alongwith affidavits of the witnesses. Just and reasonable ground not made out by the party as to why the documents were not filed with the plaint.

In the light of aforesaid discussion, this Court is of the view that the applicant/respondent has failed to furnish any cogent reason or ground for not filing the documents at the appropriate stage. Accordingly, the application being devoid of any merit is, hereby dismissed with no order as to costs.”

15. As per findings of the trial court there is no illegality or irrationality in the impugned order. The only purpose of the petitioner is to delay the trial and to a certain extent she has succeeded in delaying the same. Accordingly, present petition is not maintainable at all under Article 227 of the Constitution of India and same is dismissed with costs of

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Rs.10,000/- (Rupees Ten Thousand Only).

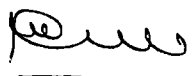
16. Petitioner is directed to deposit the costs by way of cross cheque with Registrar General of this court, within four weeks from today

17. List for compliance on 29th September, 2010.

CM No. 14893/2010 (stay)

18. Dismissed.

26th August, 2010
ab


V.B.GUPTA, J.

- amount deposited

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% 29.09.2010

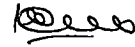
Present: Counsel for the petitioner.

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Costs have been deposited.

No further order is required to be passed in this case.



V.B. GUPTA, J.

SEPTEMBER 29, 2010

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